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Our Security, Our Rights: National Security Green Paper, 2016

5 August 2016

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MESSAGE FROM THE MINISTERS

A fundamental obligation of the Government of Canada is the responsibility to protect our safety and security at home and abroad. Equally fundamental is the responsibility to uphold the Constitution of Canada, and to ensure all laws respect the rights and freedoms we enjoy as people living in a free and democratic country.

When former Bill C-51, the *Anti-terrorism Act, 2015* (ATA, 2015), was tabled in the House of Commons, many Canadians voiced concern with the Government's approach to these responsibilities and whether the proposed legislation appropriately balanced security with rights and freedoms. Those concerns have not diminished since the passage of the ATA, 2015.

The Government is committed to openness, transparency, and accountability. An early demonstration of this commitment was making public the Prime Minister's mandate letters to Ministers, so that Canadians could see our full list of priorities. Reflecting the seriousness with which the Government regards the concerns about the ATA, 2015, our mandate letters direct us to work together to repeal its problematic elements and introduce new legislation that strengthens accountability and national security. In this respect, we have made commitments to:

- guarantee that all Canadian Security Intelligence Service (CSIS) warrants comply with the *Canadian Charter of Rights and Freedoms* (the *Charter*);
- ensure all Canadians are not limited from lawful protest and advocacy;
- enhance the redress process related to the Passenger Protect Program and address the issue of false positive matches to the list;
- narrow overly broad definitions, such as defining “terrorist propaganda” more clearly; and
- require a statutory review of the ATA, 2015 after three years.

In addition, we are establishing a statutory national security and intelligence committee of parliamentarians with broad access to classified information to examine how national security institutions are working. Further, we are also launching the Office of the community outreach and counter-radicalization coordinator to provide national coordination on preventing radicalization to violence; work with partners across communities, provinces, stakeholders and experts to ensure community resiliency; and, to develop a national strategy involving programming, policy and research.

These are our commitments, but we know more can be done. We do not view this as a simple exercise of repealing some legislative provisions and enacting new ones. Our aim is to ensure that the right tools are available to law enforcement and security officials, that they are appropriate, and that they are in keeping with Canadian values.

5 August 2016

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We consider this as an opportunity to engage you and your fellow Canadians in a discussion about certain aspects of our country's national security framework. This discussion is necessary if Canadians are to be appropriately informed about national security matters and empowered to contribute to – and influence - elements of that framework.

This Green Paper has been prepared to facilitate the process of providing us with your views. It will also serve as the foundation for the consultation that will take place in the coming months.

We sincerely hope that you will take the time to read this material and join in this discussion. We look forward to your contributions to what, we are sure you will agree, is a timely and truly important national initiative. Together we can ensure that the Government appropriately achieves a framework that upholds both security and rights.

Hon. Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency
Preparedness

Hon. Jody Wilson-Raybould, P.C., M.P.
Minister of Justice and Attorney General of
Canada

5 August 2016

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INTRODUCTION

In Canada, we are not isolated from the terrorist threat. Since the 2001 *Anti-terrorism Act*, threats to our domestic and international security have continued to evolve.

New terrorist groups – including the so-called Islamic State of Iraq and the Levant (ISIL) – have emerged and engineered chaos and destruction in many parts of the world. Increasing numbers of Canadians have travelled to the Middle East to join terrorist organizations, including ISIL. And extremist narratives have motivated a number of Canadians to plot and pursue attacks against domestic targets.

Indeed, the principal terrorist threat to Canada remains the possibility of violent extremists carrying out attacks within our borders.

Our national security institutions share a duty to keep Canadians safe – and they do so daily. At the same time, these agencies are themselves subject to measures to keep them accountable to Canadians and ensure that the rule of law is respected.

In a world of uncertainty, risk and rapid change, do we have the tools necessary to keep people safe – and are we using all our tools in ways that also safeguard our values?

The Government urges Canadians to use this consultation process to be active partners in revamping our national security framework. We want policies that are more informed and better reflect the nature of the country we share.

Counter-terrorism efforts represent a complex and deeply charged area of public policy. People have strong perspectives and clear opinions, as they should on matters of such importance.

Each of the following chapters briefly outlines the issues at hand and gives a sense of the relevant challenges. Other documents available online – including an expanded background document – provide more detailed, technical information on issues.

You are invited and encouraged to respond online and share your views on this Green Paper and the associated documents. Your input will be welcomed until November 1, 2016 – at which point the government will begin the process of crafting new legislation, policy options and / or programs.

This is only a beginning; more activities are underway or planned. The Government has launched a Defence Policy Review, as well as a review of existing measures to protect Canadians and our critical infrastructure from cyber threats. In addition, the Government will work to ensure the Communications Security Establishment has the necessary tools and policies to fulfill its important mission to protect Canada and Canadians while respecting their privacy. While these initiatives are separate from these National Security consultations, and are not discussed in this paper, they will also help make Canadians safe and protect our democratic way of life.

5 August 2016

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We have before us the opportunity to build the national security framework we want for our country – a framework that reflects Canadian values and priorities, and the nature and character of who we are and how we want to live in the world. Let us begin.

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ACCOUNTABILITY

To protect our national security, a number of government agencies are given the power to collect intelligence and enforce laws. Much of this work must be done in secret. That is just common sense.

But even as we preserve this secrecy, we must make certain that a system is in place to ensure the accountability of these agencies. That is how Canadians will know that our intelligence and enforcement powers are being exercised with great care, in a way that respects the *Charter*.

Ministerial Oversight

Two ministers in particular have important responsibilities related to national security and intelligence gathering:

The Minister of Public Safety and Emergency Preparedness is responsible for the Canada Border Services Agency (CBSA), the Canadian Security Intelligence Service (CSIS), the Royal Canadian Mounted Police (RCMP), and Public Safety Canada.

The Minister of National Defence is responsible for the Communications Security Establishment (CSE), the Department of National Defence and the Canadian Armed Forces.

All Ministers are directly accountable to Parliament for the activities of their agencies.

The Judiciary

Courts play an important role in national security.

For example, they rule on whether a warrant will be issued to allow the use of intrusive powers to investigate a threat. That is one way of ensuring that our security efforts respect the *Charter*.

The courts also examine and judge whether the methods used to secure arrests and prosecutions were justifiable and proper. And they have the authority to provide remedies in appropriate cases in relation to law enforcement misconduct.

Independent Review

There are independent, non-partisan review bodies that scrutinize the activities of certain government agencies. Their task is straightforward: to ensure that our national security and intelligence agencies operate:

- within the law; and
- respecting the directions set out by their Ministers.

There are three such review bodies:

- The Civilian Review and Complaints Commission (CRCC), which is responsible for reviewing the RCMP;

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- The Security Intelligence Review Committee (SIRC), which reviews CSIS;
- The Office of the Communications Security Establishment Commissioner (OCSEC), which reviews the CSE.

All three review bodies have a mandate to review activities and hear complaints. Each produces an annual public report that summarizes its activities.

Parliament

Parliament holds Ministers to account for the actions of the agencies they oversee. It also considers, debates and votes on legislation relating to national security matters.

House of Commons and Senate committees can also examine policy issues related to national security, and conduct studies of government activities and existing or proposed legislation.

Currently, most Parliamentarians do not have access to classified information, which limits their ability to fully examine national security issues. The Government has therefore committed to creating a new national security and intelligence committee made up of Parliamentarians who will be given broad access to classified material.

Agents of Parliament

Certain “agents of Parliament” have the authority to scrutinize national security activities.

The Privacy Commissioner, for instance, can examine how personal information is handled. The Information Commissioner can investigate complaints regarding access to information requests. And the Auditor General can conduct “value-for-money” audits on national security programs.

Commissions of Inquiry

Commissions can be established to impartially investigate issues of national importance. Over the past decade, three separate Commissions of Inquiry have examined certain national security agencies. The three Commissions of Inquiry are:

- The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar;
- The Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin; and,
- The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.

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PREVENTION

In recent years, we have all become familiar with the concept of “radicalization to violence.” It is a process whereby a person or group of people adopts a belief or ideological position that moves them toward extremism, violence and, ultimately, to terrorist activity.

It is not a crime to be a radical, nor to have radical thoughts or ideas. But as a society, our goal must be to prevent violence of all kinds, including violence committed in the name of radical ideologies or beliefs, and activities that support such violence such as facilitation and financing.

To do this, we must better understand how and why violent radicalization typically takes root. And we must ask ourselves: What more can we do to prevent people from becoming radicalized to violence?

Here is what we know:

- Family members and friends are often the first ones aware of an individual’s first steps down the path of radicalization to violence – and may be in the best position to steer them away.
- Radicalization to violence is often driven by “narratives” that reduce global events to a few simplistic ideas.
- It frequently takes place within networks and communities, both physical and virtual (the Internet often plays a critical role).
- Radicalization to violence can be incited by friends, mentors or other influential individuals.
- Association with radicalized people can influence others to adopt a similar perspective.

What Are We Currently Doing?

In the Government of Canada, a number of agencies play a role in addressing radicalization to violence:

- The RCMP trains officers on how to recognize early warning signs of radicalization. It also leads interventions in an effort to divert those on the path to violence.
- Correctional Service Canada conducts tailored interventions for individuals in prison who have radicalized to violence, or are at risk of doing so.

What More Can We Do?

The Government is dedicating \$35 million over five years to create an office for community outreach and countering radicalization to violence.

Activities to be supported by this office could include:

- *Working with Communities.* Empowering local leaders to strengthen community resilience and develop early intervention programs can be an effective way of preventing radicalization to violence.

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- *Youth Engagement.* Radicalization to violence is, in Canada, disproportionately common among young people - it is important to reach out and support youth in ways that are meaningful to them.
- *Alternative Narratives.* Promoting positive alternative narratives through credible voices is one way to diminish the influence of violent, radical messages.
- *Emerging Research.* By engaging academics, think tanks and other Canadians, we can collect best practices and ensure the most effective means are being used to counter radicalization to violence. Knowing what works will help inform future policy in this area.

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THREAT REDUCTION

Here is how our system has worked for the past 30 years:

- CSIS collects information on suspected threats to the security of Canada and Canadians, at home and abroad.
- CSIS advises other agencies of government – law enforcement, for example – about the threats.
- These other agencies act on the information.

When Bill C-51 (the *Anti-terrorism Act, 2015*) was passed, CSIS was given a new mandate to take direct action to reduce threats to the security of Canada. This is known as “threat reduction,” or “disruption.” These threats are defined in the *CSIS Act* and have remained unchanged over the past 30 years.

To be clear: CSIS cannot arrest people. But it now has the authority to take timely action to reduce a threat – disrupting financial transactions, for instance, or interfering with terrorist communications.

To investigate, CSIS needs to have reasonable grounds to *suspect* that an activity is a threat. For threat reduction measures, CSIS has a higher threshold – it must have reasonable grounds to *believe* that an activity is a threat.

All threat reduction measures must be reasonable and proportional in the circumstances, and are subject to explicit restrictions. According to direction from the Minister of Public Safety and Emergency Preparedness, CSIS must also perform a risk assessment – and consult law enforcement and other agencies, as appropriate – for each threat reduction measure.

Depending on the actions it plans to take, CSIS may require a warrant to proceed, especially if the measures would potentially affect the rights of Canadians as enshrined in the *Charter*.

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DOMESTIC NATIONAL SECURITY INFORMATION SHARING

National security threats can emerge and evolve quickly. Information must be gathered and shared among government agencies to ensure a full understanding of a potential threat, as various agencies can have different pieces of the full picture.

There are rules in place that affect the Government's authority to share information, especially information that may impact on individuals' privacy rights.

However, these rules are complex. It is sometimes difficult for one agency to know whether it can share information with another agency, and in some cases, there is no authority to share. This can affect our awareness of, and response to, an emerging national security threat.

Here is some important background: The *Privacy Act* governs the Government's management of personal information, including its collection, use and disclosure. Disclosure is not permitted without the consent of the individual to whom the information relates, other than in certain circumstances, some of which may apply to national security information sharing.

For example, Immigration, Refugees and Citizenship Canada will share with CSIS some personal information of applicants for permanent resident status in our country. This allows for more efficient and effective security screening.

The *Security of Canada Information Sharing Act*

Bill C-51 (the *Anti-terrorism Act, 2015*) created the *Security of Canada Information Sharing Act* (SCISA), which established an additional authority for national security information sharing. It provides all federal government institutions with a new, explicit authority to disclose information related to an "activity that undermines the security of Canada" to certain designated federal institutions with national security responsibilities.

Importantly, this does not include activities of protest, advocacy, dissent or artistic expression. Information about these activities cannot be disclosed under the SCISA.

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THE PASSENGER PROTECT PROGRAM

Protecting air travellers is a key responsibility of the Government of Canada. We must also confront the threat posed by individuals who travel abroad – to countries such as Syria and Iraq – to engage in acts of terrorism.

These individuals can be involved in training, fundraising and other activities on behalf of terrorist groups such as the so-called Islamic State in Iraq and the Levant (ISIL). There is also the risk that, upon returning to Canada, these people may launch or inspire attacks here.

Under the new *Secure Air Travel Act* (SATA), which came into being with the passage of Bill C-51, the Government can use the Passenger Protect Program (PPP) – an air passenger identity screening program – to identify individuals who pose a threat to transportation security or are seeking to travel to commit certain terrorism offences.

These people are placed on what is known within the Government as “the SATA list” (sometimes mistakenly referred to as a “No Fly List”).

Individuals on this list may be subjected to a range of measures to mitigate the threat that they pose, including being denied boarding of an aircraft – or having to undergo additional screening measures.

The list must be reviewed every 90 days to ensure there are still reasonable grounds to suspect an individual poses a threat.

Anyone who is denied boarding of an aircraft has the right to apply to the Minister of Public Safety and Emergency Preparedness to be removed from the SATA list and, if unsuccessful, to appeal the decision to the Federal Court.

False positive matches sometimes occur. This can result in air travel delays. The Government has made a commitment to introduce an efficient and effective redress program to address the issue of false positive name matches to the SATA list.

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CRIMINAL CODE TERRORISM MEASURES

Since 2001, a number of people have been convicted of terrorism offences in Canada. Some have received life sentences. Our *Criminal Code* sets out a range of anti-terrorism powers for law enforcement and lists a range of terrorism-related offences.

With the *Anti-terrorism Act, 2015*, the *Criminal Code* was amended to:

- make it easier to prevent the carrying out of terrorist activity or terrorism offences;
- make it a crime to advocate or promote terrorism offences;
- give courts the power to order the seizure and forfeiture or removal of terrorist propaganda;
- give additional protection to witnesses and other participants in national security proceedings.

Let us look at each of these amendments, one by one.

Reasonable Conditions

Generally, Canadian criminal law focuses on the prosecution of offences that have already taken place. But courts can also impose reasonable conditions on an individual in order to prevent that person from committing an offence.

When it comes to potential terrorism, law enforcement has two tools at its disposal, upon application to the courts:

- **Recognition with conditions**, which allows police to intervene and seek to have the court impose conditions on an individual who is suspected of being connected in some way to terrorist activity.
- **A terrorism peace bond**, which is used to prevent an individual from committing a specific terrorism offence, such as leaving Canada to commit an offence for a terrorist group.

With the passage of Bill C-51, it became easier for police to apply for, and use, these two tools.

For example, the thresholds to obtain a **recognition with conditions** was lowered to apply to instances in which law enforcement officials believe terrorist activity “may be carried out” and suspect that the recognition “is likely to prevent” it – rather than the previous thresholds of “will be carried out” and “is necessary to prevent”.

And a **terrorism peace bond** can now be issued where law enforcement believes an individual “may commit”- rather than “will commit” - a terrorism offence.

People who are subject to a **recognition with conditions** or a **terrorism peace bond** face the possibility of detention and other restrictions on their liberty, without having been charged with, or convicted of, an offence.

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Promotion of Terrorism Offences

It is now a criminal offence for a person to knowingly advocate the commission of terrorism offences in general. The individual *must know* that an offence will be committed or *be reckless* as to whether an offence may be committed as a result of what they say or write.

Seizure and Forfeiture of Terrorist Propaganda

There are two new warrants in the *Criminal Code* that allow police to seize terrorist propaganda. This is material that encourages the commission of a specific terrorism offence, or terrorism offences in general. This material can be in printed, audio or video form, or it can be in electronic form on the Internet.

Related amendments to the *Customs Tariff* also allow CBSA border services officers to seize terrorist propaganda being imported into Canada without a warrant, as they would other contraband.

Protection of Witnesses and Other Participants in the Justice System

Under the *Anti-terrorism Act, 2015*, enhanced measures are now available to protect witnesses and other participants in national security-related proceedings.

For example, judges can now order that witnesses testify behind a screen to conceal their identity, or use a pseudonym, or wear a disguise. And there is a broader range of instances under which charges can be laid against those who attempt to intimidate justice system participants.

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TERRORIST ENTITY LISTING PROCEDURES

Formally listing an individual or group as a “terrorist entity” is a way of curtailing their support and publicizing their involvement with terrorism.

Right now, there are three ways a terrorist entity may be listed in Canada. The most common method is available through the *Criminal Code*. An individual or group listed as a terrorist entity under the *Criminal Code* has its funds immediately frozen, and potentially seized and forfeited.

There are currently more than 50 terrorist entities which have been listed in this way. They include al-Qaida, the Taliban, ISIL, Boko Haram and more.

How Does a Group Get Listed?

It begins with an investigation by the RCMP or CSIS. The Minister of Public Safety and Emergency Preparedness may then recommend to Cabinet that the entity be listed, so long as there are reasonable grounds to believe that the entity:

- knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or
- is knowingly acting on behalf of, at the direction of, or in association with an entity that has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity.

Many of Canada’s closest allies keep similar lists of terrorist entities.

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TERRORIST FINANCING

Terrorist entities raise, collect and transfer funds all over the world to finance their attacks and support their day-to-day operations. They make use of everything from the formal banking system to money service businesses, to the physical transfer of gold.

Funds are vital to these organizations – and to the violence they perpetrate. It is therefore important that we deprive them of the money they need to plan and conduct their activities.

Canada's approach to cutting off funds to terrorist groups involves 11 departments and agencies. Additionally, financial service providers – such as banks – have an obligation to know their customers, keep records and report certain transactions to help identify money laundering and terrorist financing.

Law enforcement and intelligence agencies can use some of the information from these reports to assist in their efforts to identify and disrupt terrorist activities.

A challenge faced by Canada and other advanced nations is the pace of evolution within the financial sector. It can be difficult to keep up to date as financial technology advances and new platforms that could be exploited for terrorist financing emerge.

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INVESTIGATIVE CAPABILITIES IN A DIGITAL WORLD

We live in a highly networked world where technological innovation is always forging ahead, bringing advancements to our quality of life but also evolving threats to our security.

The same technologies we enjoy and rely on everyday – smartphones, laptop computers and the like – can be exploited by terrorists and other criminals to coordinate, finance and conduct their attacks or criminal activities.

Our law enforcement and national security investigators must be able to work as effectively in the digital world as they do in the physical world.

To make that possible, we need to ensure that our laws for the collection of information and evidence keep up with the pace of technology. For instance, our current investigative capability can be impeded by:

- lack of consistent and timely access to basic subscriber information, to help identify the subscriber of a communications service;
- lack of reliable technical intercept capability on domestic telecommunications networks;
- diminished ability to investigate due to the use of advanced encryption;
- lack of consistent retention of communication data.

Let us look more closely at each of these four challenges:

Basic Subscriber Information

Basic subscriber information is a way for law enforcement and national security investigators to use a communications subscription (to an Internet provider, for instance) to identify an individual. But court rulings on constitutional safeguards for this type of information have made it difficult to access it in a timely and effective manner. Many countries allow police and intelligence agencies to access basic subscriber information without going to court.

Intercept Capability

The ability to intercept communication is an essential tool in national security and criminal investigations. However, some communications providers are unable to comply with court orders because they lack the technical ability to intercept communications. Investigators can therefore miss out on key intelligence and evidence.

Encryption

Encryption technology gives terrorists and other criminals an additional way to avoid discovery, investigation and prosecution. Often, even when law enforcement is able to intercept private communications, the messages are protected by encryption and are unreadable. Currently, there is no legal mechanism designed to compel a person or organization to decrypt their communications.

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Data Retention

“Data retention” refers to the storage of telecommunication information – keeping track of which telephone numbers a person dialed, for instance, or how long the calls lasted. Phone and Internet data of this kind can be critical in intelligence and evidence gathering. However, there is currently no general requirement for communications providers to retain this information. Some delete it very quickly.

These and other challenges can be amplified by the fact that data can move instantly across national borders. Communications service providers may offer services in Canada – but may have no business presence here, and therefore may fall beyond the reach of Canadian law.

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INTELLIGENCE AND EVIDENCE

We all want to ensure that Canada's national security information is protected. Indeed, the Government has an obligation to protect sensitive sources, capabilities and techniques. At the same time, there are instances in which this information may be required for a legal proceeding.

There are existing frameworks that govern the protection and use of national security information in a range of legal proceedings. For the most part, a Federal Court judge must decide whether disclosure of the information would hurt our international relations, national security or national defence. If so, the judge must then consider whether the public interest in disclosing the information outweighs the public interest in keeping it protected.

Sometimes, this means that a criminal court may be unable to hear the national security information – and may need to rely on an unclassified summary instead. Or it could be the case that, in a civil proceeding, a plaintiff may not have full access to the information required to make their case – or a defendant may be unable to mount a full defence. This raises the question of whether justice can truly be served in these examples.

There are also implications relating to immigration proceedings, where classified information is sometimes used. A good example is what is known as a “security certificate proceeding,” in which the Government makes the case that a non-citizen is inadmissible to Canada for reasons of security, violation of human or international rights, serious criminality or organized criminality.

In this case, a Federal Court judge rules on whether the certificate is reasonable. Former Bill C-51 made changes to immigration proceedings relying on classified information to better protect that type of information.

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CONCLUSION

We invite all Canadians to consider the questions raised in this Green Paper – and to read the longer and more comprehensive background document, which includes greater detail and a number of scenarios that help to illustrate what is at stake as we work to improve our security and intelligence framework.

Most of all, we encourage Canadians to let their opinions, ideas and potential solutions be heard.

As a starting point, here are a few questions to consider:

1. What steps should the Government take to strengthen the accountability of Canada's national security institutions?
2. Preventing radicalization to violence helps keep our communities safe. Are there particular prevention efforts that the Government should pursue?
3. In an era in which the terrorist threat is evolving, does the Government have what it needs to protect Canadians' safety while safeguarding rights and freedoms?
4. Do you have additional ideas or comments on the topics raised in this Green Paper and in the background document?

These are just suggestions to begin the dialogue as we seek the broad and meaningful contributions of Canadians.

Invariably, views will differ. Not all of us will share the same perspective on what is justified and what is reasonable. There will be strong opinions on which tools should be made available to the Government and its security and intelligence agencies.

But that is what we want. We want to hear your views, and the views of your fellow Canadians.

Be mindful of our two-fold objective:

- To be effective in keeping Canadians safe;
- To safeguard our values, our rights and freedoms, and the open, inclusive and democratic character of our country.

We want to carefully consider the results of the consultations as we work to make meaningful improvements to Canada's national security efforts.

Respond to the Consultation Questions Online at [website].